

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AJR77)

Received: 05/03/2006

Wanted: Today

For: Glenn Grothman (608) 266-7513

This file may be shown to any legislator: NO

May Contact:

Subject: Constitutional Amendments

Received By: jkreye

Identical to LRB:

By/Representing:

Drafter: jkreye

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Grothman@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Revenue limits; borrowing

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 05/03/2006	csicilia 05/03/2006		_____			
/1			rschluet 05/03/2006	_____	mbarman 05/03/2006	mbarman 05/03/2006	

FE Sent For:

<END>

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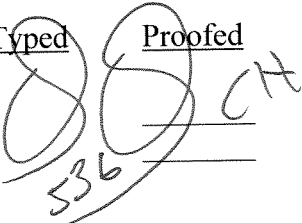
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FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Jim Emerson - info added # SJR 63

(draft or a rule to SJR 77



SSA

to

Assembly

2005 ~~SENATE~~ JOINT RESOLUTION ~~63~~ 77

February 14, 2006 - Introduced by Senators GROTHMAN, LAZICH, DARLING, S. FITZGERALD, A. LASEE, KEDZIE, KANAVAS, ZIEN, LEIBHAM, REYNOLDS, SCHULTZ and STEPP, cosponsored by Representatives WOOD, HONADEL, HUEBSCH, GARD, PRIDEMORE, STRACHOTA, KERKMAN, NASS, LOTHIAN, F. LASEE, J. FITZGERALD, GUNDRUM, HUNDERTMARK, JENSEN, MUSSER, PETTIS, NISCHKE, LEMAHIEU, VOS, KLEEFISCH, GUNDERSON, NEWCOMER, KESTELL, VUKMIR, SUDER and MONTGOMERY. Referred to Select Committee on Taxpayer Protection Amendment.

- 1 **To create** section 11 of article VIII of the constitution; **relating to:** creating a
2 revenue limit for the state and local governmental units, depositing excess
3 revenue into an emergency reserve, returning excess revenue to taxpayers,
4 elector approval for exceeding the revenue limit, state and local governmental
5 approval for reducing the revenue limit, allowing local governmental units to
6 raise revenue to compensate for reductions in state aid, requiring the state to
7 reduce its revenue limit in conjunction with reduction in state aid, reimbursing
8 the reasonable costs of imposing state mandates, standing to bring a suit to
9 enforce the revenue limits, and requiring the approval of only one legislature
10 to amend the revenue limit provisions (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 2005 legislature on first consideration, limits the amount of revenue from taxes and fees that the state or a special purpose district, school district, technical college district, county, city, village, or town may receive in any year to the amount it received in the previous year, for the year in which the limit takes effect, or the maximum amount it could have received in the previous year, for subsequent years, increased by the percentage

that is the average of the annual percentage increases, if any, in the consumer price index for each of the three years preceding the previous year, but not to exceed the annual percentage increase, if any, in state personal income for the year preceding the previous year, plus the percentage increase in population for the state, a special purpose district, a county, or a technical college district; the percentage that is the average of the annual percentage increases, if any, in student enrollment for a school district in each of the three years preceding the previous year; and 60 percent of the percentage increase from the first to the second of the two previous years in property values related to new construction for a city, village, or town.

Under the proposed amendment, a "special purpose district" is defined as any entity other than the state, a school district, a technical college district, a county, a city, a village, or a town that is authorized to collect taxes or fees.

The proposed amendment defines "revenue," generally, as all moneys received from taxes, fees, licenses, permits, assessments, fines, and forfeitures imposed by the state or a special purpose district, school district, technical college district, county, city, village, or town, lottery proceeds less the amount of any prizes, tribal gaming proceeds, and all moneys received from bonds not including moneys generated from municipal economic development bonds, from the refinancing of bonds, or from short-term cash flow borrowing. However, for the base year upon which the revenue limit is calculated, "revenue" does not include moneys generated from bonds.

Generally, all revenue from taxes and fees that the state receives in excess of the limit must be placed in an emergency reserve fund. Any remaining excess revenue must be returned to the taxpayers. In addition, all revenue from taxes and fees that a special purpose district, school district, technical college district, county, city, village, or town receives in excess of the entity's limit must be returned to the taxpayers.

Under the proposed amendment, generally, if a special purpose district, school district, technical college district, county, city, village, or town receives state aid in any year in an amount that is less than the amount of state aid that the entity received in any previous year beginning, generally, after the ratification of the proposed amendment, the entity may collect additional revenue in the current year in an amount not to exceed the greatest amount of state aid received by the entity in any previous year beginning, generally, after the ratification of the proposed amendment, minus the current year's state aid. The additional revenue is not included in determining the entity's revenue limit. Furthermore, the state must reduce its revenue limit by the amount of any aggregate reduction in state aid. However, if a program or function for which the state aid is provided is eliminated or commensurately reduced in scope or applicability, as determined by the legislature, the state is not required to reduce its revenue limit by the amount of the reduction in state aid, and an entity may not collect additional revenue to compensate for the reduction in state aid.

The state may make expenditures from its emergency reserve fund with the approval of a majority of the members of each house of the legislature for tax relief or in a year in which the amount of the state's revenue limit is greater than the

amount of its revenue. The expenditures are included in the calculation of the state's revenue limit.

Under the proposed amendment, the state, or a special purpose district, school district, technical college district, county, city, village, or town may reduce the revenue limit imposed under this section by a majority vote of the governing body of the entity or, in the case of the state, by the vote of a majority of the members elected to each house of the legislature; and may exceed the revenue limit only with the approval of the electors of the state, county, special purpose district, school district, technical college district, city, village, or town, respectively, at a referendum as prescribed by the legislature by law. The referendum must specify whether the increase in the revenue limit is on a recurring or nonrecurring basis.

Under the proposed amendment, the legislature may, by law, adjust the revenue limit for any governmental unit to accommodate the transfer of services from one governmental unit to another. In addition, generally, a state law or administrative rule that requires a special purpose district, school district, technical college district, county, city, village, or town to expend money may not be enacted or adopted after the ratification of this proposed amendment unless the state provides for the payment to the entity of an amount that is equal to the reasonable costs incurred by the entity to comply with the law or rule, as determined by the legislature.

The proposed amendment allows any individual or class of individuals residing in this state to bring a suit to enforce the revenue limits imposed on the state or on the local governmental unit where the individual or class of individuals resides or pays property taxes. In addition, the provisions created in the amendment may be amended with the approval of one legislature, rather than two, and ratification by the people.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

Resolved by the ^{assembly} ~~senate~~, the ^{senate} ~~assembly~~ concurring, That:

SECTION 1. Section 11 of article VIII of the constitution is created to read:

[Article VIII] Section 11 (1) In this section:

(a) "Calendar year entity" means a local governmental unit that has a calendar year as its fiscal year.

(b) "Fiscal year entity" means the state or a local governmental unit that has a fiscal year that is not a calendar year.

(c) "Local governmental unit" means a county, municipality, special purpose district, school district, or technical college district.

1 (d) "Municipal economic development bond" means a bond issued to finance
2 real property improvement that is directly related to economic developments, as
3 defined by the legislature by law.

4 (e) "Municipality" means a city, village, or town, not including a town whose
5 budgeted revenue is less than \$1,000,000 for the 2009 calendar year or, in
6 subsequent calendar years, less than \$1,000,000 increased by the percentage
7 increase, if any, in the consumer price index for Milwaukee–Racine or its successor
8 index from the 2007 calendar year to the calendar year preceding the previous
9 calendar year. "Municipality" includes a district, utility, or other entity that receives
10 moneys from taxes or fees and that is authorized, created, or established by a city,
11 village, or town, regardless of whether the governing body of the city, village, or town
12 retains any authority or control over the district, utility, or other entity. For purposes
13 of this section, the moneys received by such a district, utility, or other entity from
14 taxes or fees shall be considered revenue of the city, village, or town that authorized,
15 created, or established the district, utility, or other entity, unless such moneys would
16 not be revenue under this section if received by the city, village, or town or unless
17 considering them revenue would result in the inclusion of such moneys twice in
18 revenue.

19 (f) "Population" means annual population estimates adjusted by the most
20 recent federal decennial census, as determined by the state.

21 (g) "Revenue" means all moneys received from taxes, fees, licenses, permits,
22 assessments, fines, and forfeitures imposed by the state or a local governmental unit,
23 lottery proceeds net of prizes, tribal gaming proceeds, and all moneys received from
24 bonds, but not including moneys generated from municipal economic development
25 bonds, from the refinancing of bonds, or from short-term cash flow borrowing.

1 “Revenue” includes revenue transferred or spent from a fund under sub. (3), not
2 including moneys transferred or spent for refunds or relief from taxes imposed by the
3 state, and, in the case of the state, the amount of any tax credit enacted into law after
4 December 31, 2008, if the credit percentage exceeds the applicable highest marginal
5 tax rate. “Revenue” does not include excess revenue deposited into a fund under sub.
6 (3), moneys used for debt service on a municipal economic development bond, moneys
7 used to pay a damage award, or moneys received from the federal government, from
8 the state or a local governmental unit providing governmental services to
9 governmental entities, from gifts, from damage awards, or from real property sales
10 to taxable entities, moneys received for the operation of a telephone, gas, electric, or
11 water utility, or moneys received for medical care provided by hospitals, nursing
12 homes, assisted living facilities, or other medical facilities operated by any entity
13 that is subject to the limits imposed under this section, from unemployment
14 insurance taxes, from insurance assessments or premiums, from employee
15 payments for fringe benefits, from governmental property insurance, from
16 investment trusts, from private purpose trusts, from college savings programs, from
17 fees imposed for airport or mass transportation systems, or from tuition or fees
18 imposed on students to support university or technical college functions. The
19 legislature, by law, may exclude from “revenue” moneys generated by a local
20 governmental unit from any source other than taxes, except that the legislature may
21 not exclude any amount of money generated from licenses that exceeds the cost of
22 issuing the license or any amount of money generated by a fee that exceeds the cost
23 of providing the service associated with the fee. For the 2008 calendar year, for
24 calendar year entities, and for the 2009 fiscal year, for fiscal year entities, “revenue”
25 does not include moneys generated from bonds.

1 (h) "Special purpose district" means any entity other than the state, a school
2 district, a technical college district, a county, or a municipality that is authorized to
3 collect taxes or fees.

4 (i) "State aid" means all of the following, as defined by the legislature by law,
5 but does not include a one-time grant:

- 6 1. Shared revenue.
- 7 2. Equalization aids.
- 8 3. Community aids that are used to provide social services.
- 9 4. General transportation aids.
- 10 5. Categorical school aids.
- 11 6. Aid to technical college districts.

12 (2) (a) Subject to subs. (3), (4), and (6) to (8), for the 2009 calendar year, for
13 calendar year entities, and for the 2010 fiscal year, for fiscal year entities, the state
14 or a local governmental unit may not collect more in revenue than the amount it
15 collected in the previous calendar year, for calendar year entities, or in the previous
16 fiscal year, for fiscal year entities, increased by the percentage that is the average of
17 the annual percentage increases, if any, in the consumer price index for
18 Milwaukee–Racine, or its successor index, for each of the 3 calendar years preceding
19 the previous calendar year, for calendar year entities, or for each of the 3 fiscal years
20 preceding the previous fiscal year, for fiscal year entities, but not to exceed the
21 annual percentage increase, if any, in state personal income from the 2006 calendar
22 year to the 2007 calendar year, for calendar year entities, or from the 2007 calendar
23 year to the 2008 calendar year, for fiscal year entities, plus:

- 24 1. For the state, a special purpose district, a county, or a technical college
25 district, the percentage increase from the first to the 2nd of the 2 years preceding the

1 previous year in the population of the state, special purpose district, county, or
2 technical college district, respectively.

3 2. For a school district, the percentage that is the average of the annual
4 percentage increases, if any, for each of the 3 years preceding the previous year in
5 enrollment of students in 5-year-old kindergarten through the 12th grade.

6 3. For a municipality, 60 percent of the percentage increase from the first to the
7 2nd of the 2 previous years in property values attributable to new construction, less
8 the value of any property removed or demolished, in the municipality.

9 (b) Subject to subs. (3), (4), and (6) to (8), for calendar years beginning in 2010,
10 for calendar year entities, and for fiscal years beginning in 2011, for fiscal year
11 entities, the state or a local governmental unit may not, in any calendar year or in
12 any fiscal year, as applicable, collect more in revenue than the maximum amount
13 that it was permitted to collect in the previous calendar year, for calendar year
14 entities, or in the previous fiscal year, for fiscal year entities, under this subsection,
15 increased by the percentage that is the average of the annual percentage increases,
16 if any, in the consumer price index for Milwaukee–Racine, or its successor index, for
17 each of the 3 calendar years preceding the previous calendar year, for calendar year
18 entities, or for each of the 3 fiscal years preceding the previous fiscal year, for fiscal
19 year entities, but not to exceed the annual percentage increase, if any, in state
20 personal income from the 3rd calendar year preceding the current calendar year, for
21 calendar year entities, or preceding the end of the current fiscal year, for fiscal year
22 entities, to the 2nd calendar year preceding the current calendar year, for calendar
23 year entities, or preceding the end of the current fiscal year, for fiscal year entities,
24 plus the applicable percentage increase under par. (a) 1., 2., or 3.

1 (3) (a) If the revenue received by the state in any state fiscal year exceeds its
2 limit under this section, the state shall deposit into an emergency reserve fund all
3 of the excess revenue, except that the total amount in the emergency reserve fund
4 may not exceed an amount that is equal to 8 percent of the state's total revenue in
5 the previous state fiscal year.

6 (b) The state may make expenditures from its emergency reserve fund only by
7 a majority vote of the members of each house of the legislature, and only for relief
8 from taxes imposed by the state or in a fiscal year in which the amount of the state's
9 limit determined under this section is greater than the amount of the state's revenue.

10 (4) If a local governmental unit receives state aid in any calendar year, in the
11 case of calendar year entities, or in any fiscal year, in the case of fiscal year entities,
12 in an amount that is less than the amount of state aid that it received in or after the
13 2008 calendar year, for calendar year entities, or in or after the 2009 fiscal year, for
14 fiscal year entities, the local governmental unit may collect additional revenue in the
15 current calendar year or current fiscal year, as applicable, in an amount not to exceed
16 the greatest amount of state aid received by the local governmental unit in or after
17 the 2008 calendar year, for calendar years entities, or in or after the 2009 fiscal year,
18 for fiscal year entities, minus the current year's state aid. Any additional revenue
19 collected under this paragraph shall not be included in determining the local
20 governmental unit's limit under this section. A local governmental unit may not
21 collect additional revenue under this paragraph for a reduction in state aid if a
22 program or function for which the state aid is provided is eliminated or
23 commensurately reduced in scope or applicability, as determined by the legislature.

1 (5) (a) The state shall return to the taxpayers the amount of any excess revenue
2 received in any fiscal year that is not deposited into an emergency reserve fund under
3 sub. (3) (a).

4 (b) If the revenue received by a local governmental unit in any calendar year,
5 for calendar year entities, or in any fiscal year, for fiscal year entities, exceeds the
6 local governmental unit's limit under this section, it shall return to the taxpayers the
7 amount of the excess revenue received in that calendar year or fiscal year, as
8 applicable.

9 (c) A refund made under this subsection shall be made in the calendar year, for
10 calendar year entities, or in the fiscal year, for fiscal year entities, immediately
11 following the calendar or fiscal year in which the state or the local governmental unit
12 has the excess revenue.

13 (6) The state or a local governmental unit may reduce the revenue limit
14 imposed under this section by a majority vote of the governing body of the local
15 governmental unit or, in the case of the state, by the vote of a majority of the members
16 elected to each house of the legislature; and may exceed the revenue limit imposed
17 under this section only with the approval of the electors of the state or local
18 governmental unit, respectively, at a referendum. The referendum shall be held in
19 such manner and at such time as the legislature shall prescribe and shall specify
20 whether the increase in the revenue limit is on a recurring or nonrecurring basis.
21 The revenue limit imposed under this section may not be increased on a recurring
22 basis by referendum in any year by more than the greater of \$50,000 or 15 percent
23 of the amount of the revenue limit that is in effect prior to the increase.

24 (7) The legislature may, by law, adjust any limit imposed under this section to
25 accommodate the transfer of services from any entity subject to a limit under this

1 section to any other such entity, including the transfer of services that results from
2 annexation. Any increase to a entity's limit under this subsection shall be offset with
3 a corresponding decrease to the limit of other entities affected by the transfer of
4 services.

5 (8) The state revenue limit under this section for a fiscal year shall be reduced
6 by the amount of any reduction in that fiscal year in the aggregate amount of state
7 aid to local governmental units, as compared to the previous fiscal year. This
8 subsection does not apply to a reduction in state aid if a program or function for which
9 the state aid is provided is eliminated or commensurately reduced in scope or
10 applicability, as determined by the legislature.

11 (9) A state law or administrative rule that requires the expenditure of money
12 by a local governmental unit may not be enacted or adopted on or after the
13 ratification of this subsection unless the state provides for the payment to the local
14 governmental unit of an amount that is equal to the reasonable costs incurred by the
15 local governmental unit to comply with the law or rule. For purposes of this
16 subsection, the legislature shall be the sole determiner of the reasonable costs
17 incurred by a local governmental unit to comply with any law or administrative rule.
18 This subsection does not apply to any state law or administrative rule that is enacted
19 or adopted in order to comply with a requirement of federal law, including a
20 requirement related to receiving federal aid.

21 (10) Any individual or class of individuals residing in this state has standing
22 to bring a suit to enforce this section as it relates to the state or to the local
23 governmental unit in which the individual or class of individuals resides or pays
24 property taxes. A court of record shall award a successful plaintiff costs and
25 reasonable attorney fees in the suit, but may not allow the state or a local

Insert 10-20

1 governmental unit to recover costs and reasonable attorney fees unless a suit against
2 it is ruled frivolous.

3 ¹²
4 (11) Any amendment or amendments to this section that are directly related
5 to the revenue limits under this section may be proposed in either house of the
6 legislature, and if the same shall be agreed to by a majority of the members elected
7 to each of the two houses, such proposed amendment or amendments shall be entered
8 on their journals, with the yeas and nays taken thereon; notwithstanding section 1
9 of article XII, it shall then be the duty of the legislature to submit such proposed
10 amendment or amendments to the people in such manner and at such time as the
11 legislature shall prescribe; and if the people shall approve and ratify such
12 amendment or amendments by a majority of the electors voting thereon, such
13 amendment or amendments shall become part to the constitution; provided, that if
14 more than one amendment be submitted, they shall be submitted in such manner
15 that the people may vote for or against such amendments separately.

16 **SECTION 2. Numbering of new provision.** The new section 11 of article VIII
17 of the constitution created in this joint resolution shall be designated by the next
18 higher open whole section number in that article if, before the ratification by the
19 people of the amendment proposed in this joint resolution, any other ratified
20 amendment has created a section 11 of article VIII of the constitution of this state.
21 If one or more joint resolutions create a section 11 of article VIII simultaneously with
22 the ratification by the people of the amendment proposed in this joint resolution, the
23 sections created shall be numbered and placed in a sequence so that the sections
24 created by the joint resolution having the lowest enrolled joint resolution number
have the numbers designated in that joint resolution and the sections created by the

1 other joint resolutions have numbers that are in the same ascending order as are the
2 numbers of the enrolled joint resolutions creating the sections.

3 ***Be it further resolved, That*** this proposed amendment be referred to the
4 legislature to be chosen at the next general election and that it be published for 3
5 months previous to the time of holding such election.

6 (END)



FOLEY & LARDNER LLP
ATTORNEYS AT LAW

MEMORANDUM

CLIENT-MATTER NUMBER
999100-0401

TO: Senator Glenn Grothman
FROM: Reed Groethe
DATE: April 21, 2006
RE: Savings Clause to Confirm Nonimpairment of Government Borrowings

This memorandum is being provided, at your request, to suggest language for the Taxpayer Protection Amendment to confirm that the amendment does not impair the credit characteristics of borrowings by the state or local governmental units.

The goal of providing governmental services efficiently will be frustrated if the borrowing rates increase because the credit characteristics of governmental borrowing are impaired. Even a small difference of a few basis points of increased borrowing rates becomes significant when applied to all governmental borrowings. To avoid that undesirable consequence, I suggest adding the following language to the amendment, as a savings clause:

9 (10)
plain

No provision of this section (1) shall alter or impair the provision, collection, appropriation, pledge, or priority of any revenues for the payment of the principal of or interest on any borrowing by or on behalf of the state or any local governmental unit, including without limitation any revenues of a local governmental unit from a direct annual tax under section 3 (3) of article XI or any revenues of the state from an appropriation under section 7 (2) (f) of article VIII, and no such revenues shall be considered excess revenues.

You did not ask me to comment on the other borrowing-related provisions contained within the Taxpayer Protection Amendment. Please let me know if you would like any additional comments.

Finally, let me mention that in responding to your request, I am acting on my own behalf, as a public finance attorney, and not on behalf of any client.

INSERT 10-20

FOLEY & LARDNER LLP